

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

JULIO GALETY,

Plaintiff,

v.

Case No: 2:20-cv-997-JLB-MRM

TRANS UNION, LLC, and
TRANSWORLD SYSTEMS, INC.,

Defendants.

ORDER

This matter is before the Court on the unopposed Motion for Extension of Time to File Answer to Amended Complaint filed by Defendant Trans Union, LLC (“Trans Union”). (Doc. 23.)

BACKGROUND

Plaintiff Julio Galety filed this lawsuit on December 22, 2020 against Trans Union and one other defendant, Transworld Systems, Inc. (“Transworld”), in which he alleges claims under the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. and the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (Doc. 1.) Transworld filed an answer to the Complaint on January 21, 2021 (Doc. 13), and Trans Union filed a motion to dismiss on February 18, 2021 (Doc. 19). Without seeking leave of court, on February 23, 2021—twenty-six days after Transworld filed its answer and five days after Trans Union filed its motion to dismiss—Plaintiff filed an Amended Complaint (Doc. 21). On March 9, 2021, Transworld filed its answer to the Amended Complaint (Doc. 22), and Trans Union filed a

motion seeking an extension of time to answer (Doc. 23). Trans Union informs the Court in that motion that the parties are currently discussing a potential settlement of the case.

DISCUSSION

Federal Rule of Civil Procedure 15(a)(2) provides that a party's ability to amend as a matter of right concludes 21 days after the first defendant in a multi-defendant lawsuit files a responsive pleading or a motion under Rule 12(b), (e), or (f). See Bowling v. Dahlheimer, No. 4:18-CV-610, 2019 WL 5880590, at *1–2 (E.D. Tex. Aug. 7, 2019); Allen v. Vintage Pharm. LLC, 5:18-CV-00329-TES, 2019 WL 542981, at *2–3 (M.D. Ga. Feb. 11, 2019); Rubenstein v. Keshet Inter Vivos Tr., No. 17-61019-Civ-WILLIAMS/TORRES, 2017 WL 7792570, at *3 (S.D. Fla. Oct. 18, 2017); Williams v. Black Entm't Television, Inc., No. 13-CV-1459(JS)(WDW), 2014 WL 585419, at *3–4 (E.D.N.Y. Feb. 14, 2014). The first defendant to file a responsive pleading or a motion under Rule 12(b), (e), or (f) here was Transworld, who filed an answer on January 21, 2021. (Doc. 13.) Accordingly, Plaintiff's ability to amend as of right without leave of court as to any defendant expired twenty-one days after January 21, 2021, or on February 11, 2021. Plaintiff filed the Amended Complaint past this date, on February 23, 2021. (Doc. 21.) As a result, Plaintiff's filing of the Amended Complaint without first seeking leave to amend was improper.

Nevertheless, it appears from the recent filings of the two defendants that they do not oppose the filing of an amended complaint. Since amendments under

Rule 15(a)(2) are to be freely allowed, the Court will not require Plaintiff to follow the correct procedure, which would have been to seek leave of Court with an unopposed motion to amend before filing the Amended Complaint. Doing so would be a pointless exercise as the two defendants have already demonstrated their lack of opposition to Plaintiff filing an amended complaint.

Accordingly, it is **ORDERED** that:

1. Defendant Trans Union's Motion to Dismiss the original complaint (Doc. 19), is **DENIED WITHOUT PREJUDICE** as **moot**.
2. Defendant Trans Union's unopposed Motion for Extension of Time to File Answer to The Amended Complaint (Doc. 23) is **GRANTED**.
3. Either the parties shall notify the Court that a settlement has been reached, or Defendant Trans Union must file its response to the Amended Complaint, on or before **March 23, 2021**.

ORDERED in Fort Myers, Florida, on March 9, 2021.

A handwritten signature in black ink, reading "John L. Badalamenti". The signature is written in a cursive, flowing style.

JOHN L. BADALAMENTI
UNITED STATES DISTRICT JUDGE